IN THE FIRST-TIER TRIBUNAL **Case No. EA/2011/0007**
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

ON APPEAL FROM:

Information Commissioner's
Decision Notice No: FS50301943
Dated: 21 December 2010

Appellant:	**Mr Yiannis Voyias**
First Respondent:	**The Information Commissioner**
Second Respondent:	**London Borough of Camden**
On the papers	
Date of decision:	**22 January 2013**

Before
CHRIS RYAN
(Judge)
and
ROGER CREEDON
NARENDRA MAKANJI

Subject matter: Law enforcement s.31

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2011/0007**
GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Introduction

1. This appeal has been remitted by the Upper Tribunal (Administrative Appeals Chamber), following a successful appeal against an earlier decision by a differently constituted panel of this Tribunal. As the whole of the previous decision has been set aside, it has been necessary for us to consider all the issues at stake, not just those which the Upper Tribunal found to be in error in that decision. In doing so we have taken account of the guidance incorporated in the Upper Tribunal's decision.

2. We have concluded that the appeal should be dismissed. The London Borough of Camden (the "Council") was entitled to refuse a request for information about certain types of empty properties in its area because the exemption provided by the Freedom of Information Act 2000 ("FOIA") section 31(1)(a) (prejudice to the prevention or detection of crime) was engaged and the public interest in maintaining that exemption outweighed the public interest in disclosure.

The request for information and the earlier proceedings

3. The Appellant sent his request for information to the Council on 25 August 2009. As clarified in subsequent correspondence, it asked for the address of every vacant residential property within the Council's area in respect of which a "non-individual" was listed as being either the owner or as having a material interest in the property (referred to as a "void" property). It constituted a request for information for the purpose of section 1 of the FOIA. That section imposes on the public authorities to whom it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA. Each exemption is categorised as either an absolute exemption or a qualified exemption. If an absolute exemption is found to be engaged then the information covered by it may not be disclosed. However, if a qualified

exemption is found to be engaged then disclosure may still be required unless, pursuant to FOIA section 2(2)(b):

> *"in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*

4. The request was refused by the Council. The grounds for refusal have changed over time but, as the matter came before us, the only ground relied on was that the information was exempt information under FOIA section 31(1)(a). This provides that information is exempt information if its disclosure under FOIA "*would, or would be likely to, prejudice …the prevention or detection of crime*". Section 31 is a qualified exemption. Accordingly, for the Council to have been justified in its refusal it had to satisfy itself:
    a. that the exemption was engaged; and
    b. that the public interest in maintaining the exemption outweighed the public interest in disclosure.

5. The information requested covered the Council's records of both properties that were being managed by the Council at the time and those that were owned by a non-individual other than the Council. There was at one stage a suggestion that information on the council tax register also fell within the scope of the information request, but that issue has not been pursued in the appeal.

6. The Appellant complained to the Information Commissioner about the Council's refusal. Following an investigation the Information Commissioner issued a decision notice on 21 December 2010 ("the Decision Notice"). He considered, first, whether the exemption was engaged. He applied a three stage test, based on the decision of this Tribunal in *Hogan v The Information Commissioner and Oxford City Council* (EA/2005/0026 and EA/2005/0030). First, he identified the prevention of crime as being the interest that was vulnerable to being prejudiced by the release into the public domain of the information requested. Secondly, he concluded that the prejudice was real and significant, in that publishing the address of empty properties was likely to result in organised gangs breaking in and removing metal pipes, floorboards and the like so as to render the properties uninhabitable shells. He referred to this activity as "stripping". The Information Commissioner also concluded that, while squatting itself was not a criminal activity at the time, criminal activity frequently emanated from squatting and publication of the addresses of empty properties would be likely to lead to an increase in both squatting and such associated criminal activities. Thirdly, the Information Commissioner decided that there was a clear and direct causal connection between the disclosure requested and both the stripping and squatter-associated criminal activities.

7. In reaching his conclusions on the engagement of the exemption the Information Commissioner relied upon the findings of fact in an earlier decision of this Tribunal involving a request to disclose details of vacant, empty or abandoned properties in another London Borough (*London Borough of Bexley v England* – EA/2006/0060 and 0066) as well as his own earlier decision notice (FS50259951) involving a similar request made to the London Borough of Tower Hamlets. He also relied on the *Bexley* decision when conducting the public interest balance required under FOIA section 2(2)(b), once he had decided that the exemption was engaged. The Tribunal decided in that case that there was a pressing need to bring empty properties back into use and that publication of the requested information could put useful information into the hands of businesses and charities having an interest in refurbishing them, as well as making the Council more accountable for its own efforts in this respect. The Information Commissioner acknowledged the significance of those factors but concluded that they were outweighed by the greater and more immediate public interest in preventing crime and the distressing effect it would be likely to have on both individuals and other organisations.

8. The Appellant appealed against the Decision Notice and on 2 September 2011 a differently constituted panel of this Tribunal found that the exemption had been engaged but concluded that, having considered all the public interests it had identified for and against disclosure, the balance was in favour of disclosure. Accordingly, it directed the Council to disclose the list it held of both Council-managed and other void properties falling within the scope of the original information request.

The Upper Tribunal decision

9. As mentioned in paragraph 1 above, the Council successfully appealed that decision to the Upper Tribunal. Upper Tribunal Judge Edward Jacobs decided that the First-tier Tribunal had fallen into error, when carrying out the public interest balancing test, by failing to take into account those factors in favour of maintaining the exemption that were less directly connected to squatter-associated crime (in particular the crime of causing criminal damage) than the direct costs of restoring damaged property and securing the property from being broken into again. The Upper Tribunal Judge's criticism (and hence his guidance to us on this re-hearing) was as follows:

> *"The error in the tribunal's reasoning was to assume that certain acts are made criminal just for their own sake. That is not so. Preventing crime prevents the criminal acts themselves and the consequences that accompany of follow them. These factors have to be taken into account as part of the assessment of the public interest. The consequences of a crime may be financial or social. They may be direct or indirect. Just to take criminal*

> *damage, there are the costs of security measures, the cost of repairs, increased insurance premiums for the area and an impact on the local property values. There is no justification for taking account of only some of these financial consequences. There is no difference in principle between the costs that are carried by private individuals, by the public purse or spread through insurance premiums. Nor is there a difference in principle between the cost of repairing the damage and the cost of evicting someone who caused the damage in order to gain entry and possession. And there is no justification for severing financial costs from social costs….Criminal damage and its consequences can reduce the quality of life in a neighbourhood. There is a psychological element involved, which may not be rational. People may feel more vulnerable or threatened than they really are. But the impact is none the less real for that."*

The Judge then went on to provide guidance as to how the line should be drawn between factors that may legitimately be taken into account and those that may not. He took as his starting point the task that the Tribunal has to perform, namely making an assessment of the public interest, and then continued:

> *"In performing that task, it should take account of any factors that are sufficiently connected to the interests involved to be part of that assessment. If I had to capture that connection in a phrase, I would say that the tribunal should take account of any consequences that can readily be anticipated as realistic possibilities"*

10. Judge Jacobs also warned against the danger of the Tribunal assuming that people would not change their behaviour as a result of disclosure, citing the particular example of theft and arson also being likely to increase if the addresses of empty properties became publicly known, even if, in the absence of such disclosure, it had historically been more of a problem on building sites than empty properties.

11. Finally, the Upper Tribunal decided that the Tribunal also fell into error in misdirecting itself on the significance of other forms of public scrutiny that had the potential to reduce the public interest in further disclosure for the purpose of accountability. Judge Jacobs said that if accountability was a factor then other forms of scrutiny should be taken into account, such as, in this case, information on empty properties being provided to Central Government for publication, and the Council's management of its housing stock being part of its audited processes. The tribunal should therefore assess the nature and extent of their significance in the context of the case.

The remitted appeal

12. A differently constituted panel of this Tribunal was deputed to handle the remitted appeal and, with the agreement of the parties and the approval of the Tribunal, directions were given for the appeal to be determined on the papers, without a hearing, and for written submissions to be filed by the parties in sequence. In the event the Information Commissioner contented himself with the submissions he had filed before the earlier hearing but the other parties took the opportunity of presenting further submissions. In the case of the Appellant these included, by cross reference, lengthy submissions that he had filed shortly before the hearing of the earlier appeal to this Tribunal.

The issues to be determined on this appeal

13. The issues we have to determine were clarified in submissions placed before the Tribunal before the first hearing. In respect of the question, as to whether the exemption had been engaged, they were whether or not the Information Commissioner erred in the following respects:
    i. concluding that disclosure of the requested information would lead to an increase in squatting or would be of any serious use to squatters;
    ii. making an associative link between squatting and criminal activity;
    iii. deciding that the requested information would be likely to facilitate "stripping" of empty houses.

    It was also agreed that, if our conclusions on those issues should lead to a determination that the section 31 exemption had been engaged, then it would be necessary to go on to decide:
    iv. whether the Information Commissioner was also in error in deciding that the public interest in maintaining the section 31 exemption outweighed the public interest in disclosure?

14. The Appellant sought to suggest that there was a separate ground of appeal, namely that the Information Commissioner had been wrong to deviate from the approach adopted in the *Bexley* decision. However, it seems to us that this criticism addresses the route by which the Information Commissioner reached his conclusions on the first three issues. It does not constitute a separate issue in its own right. In any event, we have had the benefit of a substantial quantity of evidence filed by the Council in support of its case, which was not made available to the Information Commissioner. We do not therefore need to rely on any earlier case, making it unnecessary for us to consider whether or not it would have been appropriate for us to have done so.

15. Before addressing those issues we review, in the following paragraphs, the evidence that was made available to us.

The evidence

16. The evidence consisted of witness statements from each of the following:

    a. For the Council:
        i. Catherine Armstrong, a Service Development Officer within the Council's Housing Management Section;
        ii. Joyce Amoateng, a Private Sector Project Officer within the Council's Housing and Adult Social Care Directorate;
        iii. Angela Spooner, the Council's Head of Housing Services; and
        iv. Lesley Pigott, the Council's Assistant Director of Finance (Revenues),

    b. For the Appellant:
        i. The Appellant;
        ii. Michael Zeitlin; and
        iii. An unnamed individual who did not date or sign his statement.

    In addition, before the re-hearing the Appellant supplemented his written submission with a second witness statement signed by him. We accepted this evidence, without objection from the other parties, even though no direction had previously been made for the filing of evidence for the purpose of the re-hearing.

17. We will deal with each witness in turn, except for the evidence of Lesley Spooner, which was directed at the argument as to whether the Council's council tax register recorded information about apparently empty properties in such a way that it should have been treated as falling within the scope of the original information request. As mentioned in paragraph 5 above this argument was not pursued.

18. Ms Armstrong She has 25 years' experience of working in the housing sector. Her current responsibilities include the provision of advice and support to the District Housing offices in managing council tenancies, including the empty properties. Her evidence was that:
    a. There was a high housing need within the Council's area of administration and it placed great importance on carrying through a strategy designed to ensure that empty properties were re-let as quickly as possible for the benefit of both potential tenants and the Council's own finances. She expressed the view that, against that background, publication of the addresses of empty properties would not make any difference to the Council's commitment to tackling the issue.
    b. The statistics for empty properties showed that they represented a very small percentage of the total housing stock, reduced still

further when properties currently in the process of being viewed by potential occupants, or being repaired or redeveloped, were disregarded.

c. The statistical information referred to had been disclosed to the Appellant and he had been offered similar statistical information from other sources within the Council.
d. The Council operated a bidding system for allocating council housing and housing association properties, which took account of each individual's needs.
e. Accountability and transparency were served by the Council providing relevant statistical information to Central Government, (which was then published on the website of the Department for Communities and Local Government), as well as to the Tenants Services Authority, other tenant groups and, internally, to the Council's Joint Monitoring Board, its Departmental Management Team and its Housing and Adult Social Care Scrutiny Committee.
f. The Council has previously released some information in response to information requests, but this has not included the addresses of empty properties under Council management, a policy that is consistent with that of other London Boroughs.
g. Material available on a website for advising potential squatters, as well as media reports of the distribution of lists of vacant properties, indicated that publication of the requested information would be likely to increase the risk that squatting would occur.
h. Information from similar sources, as well as the experience of other councils, demonstrated that criminal damage was likely to be caused when squatters gained access to a property and/or attempted to secure it thereafter.
i. Media reports suggested that crimes, other than criminal damage, were likely to be committed in or around squatted properties including the intimidation or harassment of others in the community, vandalism, drug offences and prostitution. This evidence was supported by a letter from the Metropolitan Police, containing a certain amount of hearsay evidence and inadmissible opinion which, due to the way in which it has been presented to us, is capable of bearing only slight weight in the Council's favour.
j. The Council was not unsympathetic to the homeless and the poor, but did not believe that publication of the requested information would assist them and it was, in any event, not in the public interest to provide information that might enable certain individuals to "jump the queue" for the limited amount of available housing.

19. Ms Amoateng She has held her current position for five years and works closely with owners of empty properties advising them of the benefits of bringing their properties back into use. She said that:

a. In pursuance of its Housing Strategy (as well as the Greater London Authority's target to reduce the number of empty properties) the Council regularly contacted the owners of private sector residential property that was empty and encouraged them to bring it back into use, including putting them in touch with property developers. It also tried to help those interested in buying empty properties and to incentivise owners to put them to use.
b. The Council had brought back into use some 176 long term empty properties over the last three years, using a combination of advice, grants and enforcement tools.
c. The Council had also received financial assistance from the Targeted Funding Stream run by the office of the Mayor of London to assist it in bringing properties back into use.
d. All of the properties that she knew to have been squatted had been associated, at the very least, with damage and nuisance and she produced evidence of the concern and anxiety such behaviour had caused to certain individuals living near squatted property.
e. Her experience was that squatting actually hindered the attempts of owners to bring properties back into use, delaying refurbishment work and increasing owners' costs.
f. Disclosure of the addresses of empty private sector properties would, in her view, not force owners to sell their properties but would damage the relationship between the Council and the owners. It would make her job of getting empty properties back into use more difficult.
g. While property developers and other genuine potential buyers might benefit from publication, their requirements were met, to some extent, by the Council's own efforts in liaising between owners and potential buyers. In her view any benefit resulting from disclosure would not equal or outweigh her concerns about the disadvantages likely to result.

20. Ms Armstrong exhibited to her witness statement, on a closed basis, the requested information in respect of Council-managed properties, taken from its housing database. Ms Amoateng exhibited (again, on a closed basis) the information the Council held about empty private sector properties.

21. Ms Spooner She manages two Area Housing Offices responsible for Tenancy and Leasehold Services, including the re-letting process after a property has become empty. She agreed with Ms Armstrong that disclosure of the requested information would be likely to increase the risk of increased squatting but concentrated her evidence on five examples of properties known to her that had been squatted. She recorded the extent to which each case of squatting had been accompanied by anti-social behaviour and criminal activity, with a consequential detrimental impact on other residents and members of

the community, as well as the distraction of Council staff from other areas of work.

22. The Appellant, Yiannis Voyias – First Witness Statement Much of this constitutes argument, rather than evidence, but he did provide some evidence, based on long experience of squatting, as follows:
    a. The number of squatters would not increase if the requested information were placed in the public domain for a number of reasons. One reason was that *"while existing squatters would be likely to use the list, to a non-squatter the difficulty of finding an empty property would not be the main reason they are not squatting."*
    b. A list would not be of use to squatters because it would only show empty properties based on Council Tax exemptions, which are not reliable in identifying empty properties. (In this, as the Council's witnesses have made clear, Mr Voyias had misunderstood the nature of the information held by the Council). In addition, a list would not assist a squatter to identify a building that, ideally, had been derelict for some time and was not located in a busy area. It was necessary to identify such properties in order to avoid *"the risk of being seen climbing up a ladder, and entering through a window(!) and consequently ending up getting arrested…"*
    c. A list would only be useful *"as a motivator, to get you on your bike in order to check the streets of a certain area or postcode, or (the only way I have managed to use it for squatting) to check the ownership (if it is a non-individual) of a place you have found, and depending on the quality of the list (if any dates are included), how long it has been empty for."* Even then, further on-the-ground research would probably be required.
    d. The fact that criminal actions are sometimes associated with squatting was *"…almost always…not because of squatting itself, but because drug addicts happened to choose to squat those properties."* Such cases are quite rare and an addict would not, in any event, be the sort of person to go through a list of properties to locate empty ones.
    e. In the process of securing a property, which is essential to secure a degree of legal protection, "*inevitably criminal damage occurs, almost always in the form of a new lock being fitted onto the door*" in respect of which "*The criminal damage involved in securing the place is … so small as to be negligible"*
    f. Causing damage to a property in order to protect it would not in any event be a criminal offence, based on an interpretation of statute and case law, and would not be something squatters would want to do to premises they were occupying "*except perhaps in the case of drug addicts, or mentally ill people".* In most of the squats he had occupied efforts had been made to make the place look presentable and keep it in good repair.

g. Squatters sometimes form positive and supportive relationships with their neighbours and their very presence makes the area safer than when the building was vacant.
h. Reports of squatters being a nuisance were invariably untrue for one reason or another and some of those involved in local authority housing issues believe that responsible squatters, and the housing co-operative movement that grew out of their activities, may perform a useful service, including the identification of owners who deliberately keep their properties empty for long periods of time.
i. Disclosure of the lists would not assist gangs seeking to strip properties because they were more likely to attack constructions sites and a list would, in any event, reveal nothing about the house contents. Although they would help to identify properties where any theft would be less likely to be noticed, the major element in assessing vulnerable properties was to make a careful assessment on the ground, covering both the likely contents and the risks involved in trying to remove them.

23. Michael Zeitlin He has been a volunteer at the Advisory Service for Squatters ("ASS") since 1994. He expressed the opinion that lists of empty premises were not useful for people looking to squat as they are quickly out of date, not least because they may be squatted before those relying on the list are able to locate them. He added that, in his experience, squatters try to look after and repair the properties that they live in and try not to damage them.

24. Unnamed witness This is not strictly evidence, because it is an unsigned document purporting to be the evidence of an unidentified individual. However, it is of interest because it includes a concession that is against the case of the Appellant, the party placing the document before the Tribunal. The statement seeks to differentiate between, on the one hand, the witness (who claims to be a Romanian without income who is looking for a job and, with fellow squatters, takes care of the buildings he occupies and is trying to behave as "a model citizen") and, on the other, a named individual with whom he has squatted who is a drug user, who does not care about the property he squats and is involved in criminal activities connected with his drug abuse. He adds:

> *"While normal squatters find a (sic) abandoned property, try to improve the building and the surrounding environment, make friends with the neighbors (sic) and even provide services to the neighbourhood (sic) in which they move in, squatters like* [the named individual] *deteriorate the building they've squatted and commit other offenses (sic) simply because they do not care about their future."*

25. The Appellant, Yiannis Voyias – Second Witness Statement He explained that those who he described as "organised squatters"

operated in stable groups which valued security, stability and safety and followed established rules to ensure that, once having gained access to premises, they could protect themselves from those seeking to evict them. Accordingly, he said, the availability of a list of empty properties would not be of use to them because they would already know what was available to them in their area. Furthermore, he said, they would remain in premises until evicted, so that they would not be interested in moving from one place to another. As regards criminal damage, Mr Voyias stated that in his experience most of the types of groups he was familiar with had access to the skills of a locksmith, with the result that even mortice locks, which cannot be opened from the inside, may be unlocked without causing damage. Other means had to be adopted by those who did not have access to those skills, or who were not seeking access to premises having the more common type of cylinder lock, which Mr Voyias said could be opened easily from the inside, (even though he did not explain how the knob on the inside of the door could be accessed without first breaking an entry into another part of the property). In those circumstances a very thin curved line would have to be sawn to enable the lock to be pulled out of the door and replaced with another. The thin line would then be repaired immediately, which had the effect of both securing the premises from those who might seek to evict the squatters and minimising the damage caused to the fabric of the door.

<u>First Issue - Would disclosure of lists of empty properties be likely to increase the risk that squatters would target such properties?</u>

26. The Information Commissioner took no account of the fact that the Appellant had admitted to having been involved in squatting and in advising others on the subject. This is because disclosure under FOIA amounts to disclosure to the public at large, not just to the person submitting an information request. Any suspicions as to the Appellant's motivation are therefore irrelevant. However, we were provided with sufficient evidence, in particular in material published by the ASS exhibited to Ms Armstrong's evidence, to satisfy us that squatters do check available lists of empty properties and that the release of such a list by another council in response to a freedom of information request in the past had led to an increase in squatting.

27. The Council's submissions drew attention, also, to the fact that the Appellant's own Grounds of Appeal included this passage:

> *"Members of the public, who may be outraged, or may be simply desperate for housing, looking for a place to rent, will also find* [a list of addresses] *useful. Or, in the case of impoverished homeless people, as a place to squat."*

A little later the Appellant wrote:

> *"the housing needs of people in need of housing would be met* [by disclosure]. *I have helped a few street homeless people squat empty properties…"*

28. The Council also relied on a statement in the Appellant's first witness statement, in which he stated:

> *"…while existing squatters would be likely to use the list, to a non-squatter the difficulty of finding an empty property would not be the main reason they are not squatting."*

Later he stated that, in his experience, the only value of a list was:

> *"as a motivator, to get you on your bike in order to check the streets of a certain area or postcode, or (the only way I have managed to use it for squatting) to check the ownership (if it is a non-individual) of a place you have found, and depending on the quality of the list (if any dates are included), how long it has been empty for."*

29. In the Appellant's second witness statement, and in his written submissions, he suggested, contrary to what he had said in his first witness statement, that a list of addresses would not be helpful. However, he made it quite clear that his remarks referred only to those stable groups of organised squatters with which he is familiar. He said nothing about potential squatters outside of those groups, beyond expressing the opinion that they would be unlikely to access published address lists.

30. We are not convinced, on the evidence made available to us, that the Appellant is right in seeking to categorise squatters as being either:
    a. well organised and responsible ones who might use a published list as at least the starting point for an investigation into properties that were suitable for squatting, but who would not then cause damage; or
    b. those who, through drug dependency, inexperience or lack of social conscience might not take care of a squatted property, but would not, for the same reasons, take the trouble to investigate any available list.

    We believe, on the basis of the evidence summarised above, that there is cross over between the two categories and that, in any event, the well organised category is likely to cause a degree of criminal damage.

31. Our conclusion on this issue, therefore, is that the Council's evidence is to be preferred to those parts of the Appellant's evidence that purport to challenge it and that the body of evidence as a whole supports the Council's case that placing the requested information into the public domain would have the effect of assisting at least some of those wishing to engage in squatting, leading to an increase in the instances of such activity.

Second Issue – is squatting sufficiently closely associated with criminal activity to engage the section 31 exemption

32. The Council relied upon the evidence of Ms Spooner and the material published by the ASS, again exhibited to Ms Armstrong's witness statement. The ASS material included a very clear acknowledgement that some degree of criminal damage does occur when gaining access to, and/or securing, many potential squats and nothing in the evidence placed before us by the Appellant undermined that evidence. Indeed, the Appellant's two witness statements, in seeking to demonstrate that organised squatter groups keep to a minimum the damage caused when entering a property, and repair it promptly, effectively conceded that some damage does occur.

33. On this issue the Appellant's evidence incorporated a further significant flaw, in that he referred extensively to those organised groups of squatters, with which he is familiar. However, the fact that one group of squatters acts in a fairly responsible way (even though, as stated above, they may still be responsible for some degree of criminal damage) does not address the problems created by individuals, outside those groups, who are less responsible or considerate. This may include drug addicts. The Appellant's first witness statement acknowledged that criminal damage did result from drug addicts squatting in empty properties. The anonymous statement proffered as evidence by the Appellant also demonstrates that this occurs.

34. In the light of that evidence we are satisfied that the increased squatting, which we previously accepted would be likely to result from disclosure, would lead, in turn, to various categories of criminal activity.

Third Issue – would house stripping be likely to be facilitated by disclosure of the requested information?

35. The guidance provided to us by the Upper Tribunal is to the effect that, just because criminals have in the past targeted building sites rather than empty properties from which to steal metal and other materials, it does not follow that they will not change the pattern of their behaviour once aware of publicly available lists of empty properties. The Council's own evidence on this type of possible criminal activity is thin. However, its case is again supported to some extent by the Appellant's own evidence. This included transcripts of conversations with certain police officers. They acknowledged that, while building sites are likely to be the most common target, knowledge that a property was empty would make it a "softer" target worth considering stripping, provided that it was also evident that it contained a certain amount of valuable material. This would include, in particular, a multiple occupancy building that was being renovated as this would include, for example, separate heating system for every flat, each including a certain amount of copper pipe and heating equipment.

36. Our conclusion on this issue is that the availability of information about empty properties is bound to be of some value to criminal property strippers and that there is some evidence, although relatively light, that some of them might make use of it.

Our conclusion on whether, in light of our decision on Issues One to Three inclusive, the section 31 exemption was engaged?

37. We conclude that the Council has made out its case, on a balance of probabilities, that releasing the requested information would increase squatting and that there would be an increase in the instances of various types of criminal activity directly connected to it. We conclude, accordingly, that the exemption provided by FOIA section 31(1)(a) was engaged at the time when the Council refused the Appellant's information request

Fourth Issue - Did the public interest in maintaining the exemption outweigh the public interest in disclosure?

Factors in favour of maintaining the exemption.

38. The factors in favour of maintaining the exemption that were put to us in the Council's submissions were:
    a. The inherent public interest in the prevention of all crimes (even those where the damage caused may be limited or the chances of securing a conviction problematic);
    b. The cost of securing properties vulnerable to squatting and repairing damage resulting from it, whether that cost falls on the private or public purse;
    c. The cost of evicting squatters;
    d. The potential detrimental impact on those directly affected by criminal damage;
    e. The impact on the community in the vicinity of a squatted property;
    f. The problems faced by Council staff having to deal with squatting and its consequences;
    g. The impact on police resources;
    h. The direct financial cost caused by property stripping.

    The Upper Tribunal had also identified, as potentially relevant factors, the possibility that insurance premiums would rise in an area where squatters were active and that house prices would fall. However, no evidence or submissions were presented to us on either of those issues and we have not therefore taken them into account.

39. We will deal with each of the factors listed above in the order in which they appear.

40. Inherent public interest in crime prevention. We have explained above the basis for concluding that the prejudice to the prevention of crime resulting from disclosure was sufficient to cause the exemption to be engaged. For the reasons given in that part of our decision we conclude that the public interest in avoiding that prejudice is substantial and is not materially reduced by the evidence, such as it is, that some squatters (the organised and responsible squatters with whom the Appellant claims association) try to minimise the damage they cause and to repair promptly any that does result from their actions.

41. Cost of repair and security. We do not accept that the weight attributable to this factor should be reduced to take account of the Appellant's contention that squatters cause only minimal damage and invariably repair it immediately. We think that seriously underestimates the problem property owners face and that these costs may readily be anticipated as satisfying the Upper Tribunal test of being a realistic possible consequence of squatting and the damage frequently accompanying it.

42. Eviction costs. We accept that property owners are likely to bring court proceedings in order to recover property that has been squatted or, on the basis of specific evidence presented to us, to pay squatters to leave in order to avoid the trouble and expense of litigation. The guidance provided by the Upper Tribunal suggests that these costs will only be relevant for consideration in the public interest balancing exercise when the eviction proceedings follow a squatting operation that involved at least some degree of criminal damage or other criminal behaviour. Even with that limitation we believe that this factor bears some weight in the balancing exercise.

43. Impact on those directly affected. We are satisfied, on the basis of the examples included in the evidence of Ms Spooner, and despite the Appellant's attempts to reduce the significance of that evidence, that there will be occasions where individuals will suffer serious and direct loss and distress as the result of squatting. We have no way of knowing how often this is likely to occur but would certainly not dismiss it as a factor in favour of maintaining the exemption in this case.

44. Impact on surrounding community. The Appellant attempted to persuade us that squatters were capable of improving both the standard of property in an area and the quality of the environment. There may be circumstances where that is the result, but the evidence in support of it was nebulous and was met by evidence from the Council of specific instances when the opposite had occurred. This, again, is a consequence of squatting which it is realistic to contemplate. It is, however, difficult to place any firm assessment of the level of damage likely to arise and, for that reason, the significance of this factor in the balancing exercise is limited.

45. Impact on Council staff. Not surprisingly we only have the Council's evidence to support this factor in the balancing exercise and, even then, the evidence is relatively sparse. However, the number of squatting instances noted in the evidence, as well as the seriousness and complexity of the consequences, satisfies us that this should be taken into account, particularly as costs wasted in dealing with the consequences of squatting may be expected to have a detrimental effect on the funding of other necessary activities.

46. Impact on police. The evidence of this was limited to a letter from the Metropolitan Police, exhibited to the witness statement of Ms Armstrong and incorporating a number of general comments on squatting and its consequences, as perceived by the writer of the letter. We attribute only slight weight to this factor because of the relatively vague content of the letter and the unsatisfactory way it was introduced into evidence.

47. On the basis of our evaluation of the various factors listed above we have concluded that, in combination, they contribute very considerable weight to the public interest in withholding the address lists from public scrutiny. That has to be set against the weight of the public interest in disclosure of the information requested. We turn to that aspect of the case next.

Factors in favour of disclosure

48. The public interest factors supporting the disclosure of the requested information urged on us were:
    a. The need to ensure that the Council takes appropriate measures to bring empty property back into use; and
    b. The fact that squatting empty properties was itself in the public interest;

    The second of these issues was not developed by the Appellant in his submissions to us. It seems, in any event, to incorporate a tacit admission that, contrary to what the Appellant has asserted elsewhere in his case, the list would be used by squatters to populate empty properties identified in it. We can envisage circumstances where a squatting community cooperates with a local authority in order to preserve deteriorating properties or areas. However, the evidence made available to us did not come close to establishing a case in favour of disclosure on that ground. We therefore concentrate below only on the first of the factors on which the Appellant has relied.

Accountability of the Council's management of housing stock

49. As a preliminary point, we should highlight the burden placed on the Appellant on this issue. It is to demonstrate that the need for accountability will be served, not by the disclosure of some information

about empty properties, but by disclosure of the actual information he has requested.

50. It may well be that a degree of disclosure at a higher level of generality would assist the public in assessing the Council's effectiveness in this area. Indeed, Ms Armstrong has demonstrated that she has previously provided the Appellant with the numbers of empty premises broken down into the various wards within the Council's area of administration. Similarly, public scrutiny of this aspect of the Council's performance might be facilitated by the disclosure of the numbers by category of property, possibly further broken down by reference to ward boundaries or postal code areas. But the Appellant has made it clear that this would not address adequately the public interest he supports. It is the full list of the addresses of every empty property that he requires. It is therefore for him to establish to our satisfaction that the disclosure of that specific information will serve the need on which he relies.

51. The Decision Notice took into account the need to ensure local authority accountability for its management of the housing stock in order to meet the needs of those seeking homes in its area. This was also acknowledged in the submissions and evidence filed on the Council's behalf. In particular Ms Armstrong and Ms Armoateng explained the efforts made by the Council to bring back into use the categories of empty properties for which they were each responsible.

52. The Council argued that the disclosures already made, together with the existing mechanisms for scrutiny by, or on behalf of, the public already provided an adequate level of accountability. It also argued that the Council had been effective in bringing empty properties back into use. That may be so, but we are not able to perform a rigorous assessment of its success in this respect and it is not part of our remit to do so. We prefer to make our decision, not on the basis of the success or failure of this particular local authority, but on the level of transparency that the public may reasonably expect in respect of the management of housing stock by any such authority.

53. The Appellant challenged both the claim by the Council to have been relatively successful in getting empty properties back into use and the adequacy of the other elements of disclosure and scrutiny on which it relied. However, he did not provide any evidence or persuasive argument that the disclosure of the particular information he requested, the addresses of empty properties, would secure the public benefit that he claimed to champion.

54. We conclude that the public interest in disclosure of the requested information bears relatively little weight in the balancing exercise we have to perform. We reach that conclusion because, although there is a need for accountability in housing stock management, disclosure of

the particular information the Appellant requested would not meet that need.

Our conclusion on the public interest balance

55. The relatively small weight that the public interest in disclosure bears does not, in our view, come close to equalling the public interest in preventing the categories of crime we have identified in this decision. Accordingly the public interest in maintaining the exemption outweighs the public interest in disclosure. The Council was therefore entitled to refuse to disclose the information requested by the Appellant.

56. Accordingly the appeal is dismissed.

57. Our decision is unanimous.

Chris Ryan
Judge
2012

Date: 22 January 2013